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COMMISSION ON HUMAN RIGHTS

Inter-sessional open-ended working group
on a draft optional protocol to the
Convention on the Rights of the Child
on the sale of children, child
prostitution and child pornography
Second session, 29 January-9 February 1996

COMMENTS ON THE GUIDELINES FOR A POSSIBLE DRAFT OPTIONAL PROTOCOL

Note of the Secretary-General

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Introduction

1. In Paragraph 17 of its resolution 1994/90, entitled "Need to adopt effective international measures for the prevention and eradication of the sale of children, child prostitution and child pornography", the Commission on Human Rights decided to establish an open-ended inter-sessional working group of the Commission responsible for elaborating, as a matter of priority and in close collaboration with the Special Rapporteur on the sale of children, child prostitution and child pornography and the Committee on the Rights of the Child, guidelines for a possible draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication.

2. In paragraph 12 of its resolution 1995/78, entitled "Question of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, as well as the basic measures needed for their prevention and eradication", the Commission on Human Rights requested the Secretary-General to invite Governments, intergovernmental organizations, the Special Rapporteur, the Committee on the Rights of the Child and non-governmental organizations to contribute to the elaboration of a draft optional protocol on the sale of children, child prostitution and child pornography by sending comments to the guidelines contained in annex I of its report (E/CN.4/1995/95) for consideration by the working group, and to circulate these comments to Governments in advance of the meeting of the working group.

3. Pursuant to Commission resolution 1995/78, the Secretary-General, on 22 September 1995, addressed requests to Governments, intergovernmental and non-governmental organizations concerned, as well as to the Special Rapporteur on the sale of children, child prostitution and child pornography and the Committee on the Rights of the Child, for their comments.

4. As of 7 December 1995, replies had been received from the Governments of the following States: Ecuador, Grenada, Kuwait, Libyan Arab Jamahiriya.

5. Replies had also been received from the United Nations University, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the World Bank, the Council of Europe and the Organization for Economic Cooperation and Development. The following non-governmental organization submitted comments: American Association of Jurists.

6. The present report contains a summary of the substantive replies received. Any additional comments received will be issued as an addenda to this document.

I. COMMENTS RECEIVED FROM STATES

Kuwait

[Original: Arabic]
[13 December 1994]

1. The State of Kuwait has acceded to the Convention on the Rights of the Child and has introduced various legislation to affirm its commitment to the implementation of the Convention.

2. The Kuwaiti Government, in line with Commission resolution 1994/90, identifies that in relation to the phenomenon of child exploitation two factors are mostly responsible, i.e. poverty and ignorance. In view of this, the welfare of the child is one of the principal priorities of the State. Thus, article 10 of the Kuwaiti Constitution states that "the State shall care for the welfare of the young persons whom it shall protect from exploitation and from moral, physical and spiritual neglect".

3. The role of the family is also seen as being very important, the cohesion of which protects children from destitution and exploitation. Article 9 of the Constitution states that "the family, based on religion, morality and patriotism, is the cornerstone of society. The law shall preserve the integrity of the family, strengthen its ties and protect mothers and children within its framework".

4. To eradicate ignorance, which is a root cause of the exploitation of children, the Kuwaiti authorities have, in accordance with article 13, made "education a fundamental requirement for social progress, which shall be assured and promoted by the State".

5. The State has promulgated various laws to protect minors and penalties imposed on offenders are very severe. Article 159 of the Penal Code stipulates that "any woman who deliberately kills her newborn child in order to avoid shame shall be punished with imprisonment by a term of up to five year's imprisonment".

6. The State also places obligations on family providers and article 167 of the Penal Code states that "any head of a family who, being responsible for the welfare of a young person under 14 years of age, fails to fulfil his obligation to provide the young person with the necessities of life and thereby cause death or harm to the young person shall be punished by a penalty of life imprisonment or death depending on the wilful or voluntary nature of the said failure, the intention of the offender and the magnitude of the harm".

7. Illicit trafficking in children, the sale of children and exploitation of their difficult living conditions constitutes a new form of slavery. Accordingly, article 185 of the Penal Code stipulates that "anyone who causes a person to enter or leave Kuwait with a view to disposing of the said person as a slave and anyone who purchases, offers for sale or claims a person as a slave shall be liable to a penalty of up to five years' imprisonment".

8. With regard to measures taken to prevent child prostitution and child pornography, the Penal Code contains strict provisions for which the penalty is increased if the person is under the legal age. Article 200 of the Penal Code states that "anyone who incites a male or a female person to commit acts of debauchery or prostitution or in any way assists therein, shall be liable to a penalty of up to one year's imprisonment and/or a fine of up to 1,000 rupees. If the victim is under 18 years of age, the penalty shall be a term of up to two years' imprisonment and/or a fine of up to 2,000 rupees".

9. Also with regard to the coercion to induce persons, and particularly children to engage in debauchery or prostitution, article 201 of the above-mentioned Code prescribes a more severe punishment by stipulating that "anyone who uses coercion, threats or deception to induce a male or female person to engage in debauchery or prostitution shall be liable to a penalty of up to five years' imprisonment and/or a fine of up to 5,000 rupees. If the victim is under 18 years of age, the penalty shall be a term of up to seven years' imprisonment and/or a fine of up to 7,000 rupees".

10. One of the causes for the proliferation of the phenomenon of the sale of children, child prostitution and child pornography is the breakup of families or parental delinquency. Accordingly, the State promulgated the Juveniles Act under which, at the request of the Department of Juvenile Prosecutions, the juvenile court is empowered to suspend all or some of the rights of custody over juveniles, particularly if the parents have manifestly neglected the welfare of their children. In such situations the State assumes responsibility for the upbringing of those children in order to rescue them from the quagmire of the unnatural environment in which they were living and place them under the protection of the State in social welfare institutions which have an obligation to care for them by isolating them from all the influences that led to their delinquency and subjecting them to supervision and social guidance with a view to their harmonious reintegration in society.

11. The Kuwaiti Labour Act prohibits the employment of children at a young age for fear that they might be exposed to various forms of exploitation and physical coercion and also due to the State's eagerness to ensure that all children enjoy a full opportunity to receive education. Article 8 of the Labour Act stipulates that "it is prohibited to employ persons of either sex who are under 14 years of age".

12. The State of Kuwait also protects the welfare of illegitimate children, by promulgating the Foster Family Act, article 1 of which defines foster families as meaning "the placement of one or more children from the children's home run by the Ministry of Social Affairs and Labour in the care of a Kuwaiti Muslim family which, on behalf of the State, will provide them with adequate shelter, cater for their welfare and assume responsibility for their upbringing in accordance with the procedures and conditions laid down in the Act". Article 4 also states that "it is prohibited for individuals and bodies to engage in any fostering activity. It is likewise prohibited for any family or person to foster a child of unknown parentage without observing the provisions of this Act". The Act also provides under the terms of article 9 that the Ministry of Social Affairs and Labour may take preventive measures to protect the fostered child and, to this end, the Ministry may demand custody of the child from the foster parents.

13. The Government of Kuwait stated that the legal position of the State is not confined to the promulgation of national laws and legislation to protect children in this regard; it has also actively supported and commended all the international endeavours that have been made to protect children from all forms of ill-treatment.

Libyan Arab Jamahiriya

[Original: Arabic]
[5 January 1995]

1. The Libyan Arab Jamahiriya has affirmed categorically that immoral and inhuman practices involving children, such as the sale of children, child prostitution and child pornography, do not exist in the country, where the Leader of the Revolution personally ensures the welfare of children and protects them from any harm. Children in the Jamahiriya enjoy special care in accordance with the precepts of the Third Universal Theory.

2. Libyan Arab society provides legal safeguards for all children, who thereby enjoy the requisite protection from all forms of oppression, ill-treatment and exploitation, including sale and prostitution. Such practices are forbidden under Libyan law, in accordance with the precepts of the Book of God. The legislative dimension of the protection provided for children against all forms of ill-treatment is illustrated by the following examples.

3. Under article 398 of the Penal Code, anyone who ill-treats a member of his family, a young person under 14 years of age or any other person who is subject to his authority or whose upbringing, education or care is entrusted to him, is liable to be punished. Under article 398 bis, punishment is also prescribed for anyone who refuses to deliver a minor to the person entitled to demand custody, who abducts a child or has a child abducted.

4. Article 404 prescribes penalties of up to five years' imprisonment for anyone who destroys, alters or fabricates declarations.

5. Article 407 prescribes a penalty of 10 years' imprisonment for anyone who has sexual relations with a child under the age of 14. The penalty is increased to 15 years' imprisonment if the offender is one of the victim's ascendants or is responsible for his or her upbringing.

6. Article 409 stipulates that it is a criminal offence to incite minors to engage in acts of debauchery. It prescribes a penalty of imprisonment for anyone who incites a male or female minor under 18 years of age to engage in acts of debauchery, or who aids or abets therein or in any way incites such a minor to engage in an indecent act or commits such an act in front of him or her.

7. Article 412 prescribes a penalty of up to five years' imprisonment for anyone who abducts, forcibly detains, threatens or deceives a person with a view to the commission of indecent acts. The penalty is increased by up to one third if the victim is under 18 years of age.

8. With regard to child prostitution, anyone who entices a minor or a mentally handicapped person into prostitution, or aids and abets therein, is liable to a penalty of imprisonment under article 415. The penalty is increased if the victim is under 14 years of age, if the offender is an ascendant of the victim, or if the offender was entrusted with the upbringing, education, supervision, care, employment or training of the victim.

9. Article 416 prescribes a penalty of three to six years' imprisonment and a fine of 150 to 500 Libyan dinars for anyone who uses force or violence to compel a minor to engage in prostitution.

10. With regard to the sale of children, articles 425 and 426 prescribe penalties of 5 to 10 years' imprisonment for the offences of slavery and traffic in persons.

11. With regard to pornography, article 421 prescribes penalties for anyone who commits an indecent act in a public place or who offends against public morals by distributing, publicly displaying or offering for sale indecent publications, photographs or other objects. Act No. 56 of 1970 prohibits public presentations that are obscene or immoral or which provoke or are intended to provoke sexual arousal. Act No. 10 of 1984 concerning the effects of marriage and divorce, regulates the rights of the child to custody or guardianship, as well as the prohibition of adoption. The Social Security Act ensures the provision of services and benefits in cash and in kind in order to protect children as necessary and guarantee their enjoyment of satisfactory living conditions.

12. With regard to the protection of children, Jamahiriya policy is based on international and Arab conventions and agreements, including Conventions Nos. 3 and 102 of the International Labour Organization on Maternity Protection and Social Security (Minimum Standards) respectively, the Declaration on the Rights of the Child, the 1989 United Nations Convention on the Rights of the Child, and the Covenant on the Rights of the Arab Child.

13. The Jamahiriya deplores immoral and inhuman practices to which children are subjected in some parts of the world and supports all efforts to combat such practices.

II. COMMENTS SUBMITTED BY UNITED NATIONS BODIES, SPECIALIZED AGENCIES AND INTERGOVERNMENTAL ORGANIZATIONS

International Labour Organization

[Original: English]
[28 November 1995]

1. With reference to part III of the guidelines contained in annex I of the report of the working group, concerning the "Implementation of pertinent instruments", the ILO wished to provide the working group with the information on recent developments within its organs which may have relevance to the subject.

2. The Committee of Experts on the Application of Conventions and Recommendations has been dealing, in the context of the application of the ILO Forced Labour Convention, 1930 (No. 29), with the issue of forced child labour. In particular, it referred in its 1994 General Report to the exploitation of children for prostitution and pornography. There, the Committee of Experts appealed to the member States to assist in the eradication of these deplorable practices by taking measures in their own territories.

3. The governing body of the ILO at its two hundred and sixty-fourth session (November 1995) discussed the issue of child labour in its Committee on Employment and Social Policy and decided to include child labour on the agenda of the 1998 International Labour Conference. During the discussion in the ESP Committee, many speakers emphasized the need for measures to address the most intolerable forms of child labour, for instance, debt bondage and sale of children for employment. The means of ILO action in this field will therefore be discussed in the near future, including the possibility of adopting new standards.

United Nations Educational, Scientific and Cultural Organization

[Original: English]
[8 November 1995]

With regard to the guidelines contained in annex I of the report of the working group, UNESCO stated that the optional protocol should include a provision on education to the effect that:

(a) States should promote awareness, especially through the media, of the value of education;

(b) States should invest adequately in education. In particular, States must ensure that attendance by children at school should not be obligatory only. Basic education should also be supported by relevant measures such as accessibility of schools, free textbooks and educational programmes relevant to the needs of parents.

Council of Europe

[Original: English]
[14 November 1995]

1. The Council of Europe, increasingly concerned about the sexual exploitation, pornography and prostitution of children and young adults, drew the attention of the working group to its recommendation No. R(91) 11 concerning sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults adopted on 9 September 1991 by the Committee of Ministers of the Council. The recommendation sets out basic principles for a common European approach in this area and gives various recommendations to the Governments of member States to review their legislation and practice with a view to introducing, if necessary, and

implementing measures such as general measures, measures relating to pornography involving children, measures relating to the prostitution of children and young adults, measures relating to the trafficking in children and young adults and research priorities.

2. The general measures are as follows:

(a) Public awareness, education and information by:

(i) Making appropriate documentation on sexual exploitation of children and young adults available to parents and other concerned groups and associations;

(ii) Including in the programmes of primary and secondary schools educational information about the dangers of sexual exploitation and abuse to which children and adults might be exposed and about how they might defend themselves;

(iii) Promoting and encouraging programmes aimed at furthering awareness and training for those who exercise functions involving support and protection of children and young adults in the fields of education, health, social welfare, justice and law enforcement in order to enable them to identify cases of sexual exploitation and to take the necessary measures;

(iv) Making the public aware of the devastating effects of sexual exploitation, which transforms children into consumer objects, and urging the general public to take part in the efforts of associations and organizations working in these fields;

(v) Inviting the media to contribute to a general awareness of the subject and to adopt appropriate rules of conduct;

(vi) Discouraging and preventing any abuse of the voice of the children;

(b) Collection and exchange of information by:

(i) Urging public and private institutions and agencies to keep appropriate records of all victims for scientific and crime policy purposes, while respecting anonymity and confidentiality;

(ii) Encouraging cooperation between the police and all public and private organizations handling cases of sexual abuse within the family or outside of it and various forms of sexual exploitation;

(c) Prevention, detection and assistance by:

(i) Urging police services to give special attention to prevention, detection and investigation of offences involving sexual exploitation of children and young adults and allocate to them sufficient means towards that end;

(ii) Promoting and furthering the creation and operation of specialized public and private services for the protection of children and young adults at risk in order to prevent and detect all forms of sexual exploitation;

(iii) Supporting public and private initiatives at local level to set up helplines and centres with a view to providing medical, psychological, social or legal assistance to children and young adults who are at risk or who have been victims of sexual exploitation;

(d) Criminal law and criminal procedure by:

(i) Ensuring that the rights and interests of children and young adults are safeguarded throughout proceedings while respecting the rights of the alleged offenders;

(ii) Ensuring throughout judicial and administrative proceedings confidentiality of record and respect for the privacy of victims of sexual exploitation by avoiding, in particular, the disclosure of any information that could lead to their identification;

(iii) Providing for special conditions at hearings involving children who are victims of or witnesses to sexual exploitation in order to diminish the traumatizing effects of such hearings and to increase the credibility of their statements while respecting their dignity;

(iv) Providing under an appropriate scheme for compensation of children and young adults who have been victims of sexual exploitation;

(v) Providing for the possibility of seizing and confiscating the proceeds from offences relating to sexual exploitation of children and young adults.

3. The measures relating to pornography involving children consist in:

(a) Providing for appropriate sanctions, taking into account the gravity of the offence committed by those involved in the production and distribution of any pornographic material involving children;

(b) Examining the advisability of introducing penal sanctions for mere possession of pornographic material involving children;

(c) Ensuring, particularly through international cooperation, the detection of firms, associations or individuals often linked with two or more countries, using children for the production of pornographic material;

(d) Envisaging to inform the public, in order to raise awareness, of the number of prosecutions and convictions involving child pornography while ensuring the anonymity of the children concerned and of the alleged offenders.

4. The measures relating to the prostitution of children and young adults are:

(a) Increasing the material and human resources of welfare and police services and improving their working methods so that places where child prostitution may occur are regularly inspected;

(b) Encouraging and supporting the setting up of mobile welfare units for the surveillance of, or establishment of contact with, children at risk, particularly street children, in order to assist them to return to their families, if possible, and if necessary direct them to the appropriate agencies for health care, training or education;

(c) Intensifying efforts with a view to identifying and punishing on the one hand, those who foster or encourage the prostitution of children or young adults or who profit from it and, on the other hand, the customers of child prostitution;

(d) Creating or developing special units within the police and, if necessary improving their working methods, in order to combat procuring of children and young adults;

(e) Dissuading travel agencies from promoting sex tourism in any form, especially through publicity, in particular by instituting consultations between them and the public services;

(f) Giving priority to vocational training and reintegration programmes involving children and young adults who are occasionally or habitually prostituting themselves.

5. The measures relating to the trafficking in children and young adults are also to:

(a) Supervise the activities of artistic, marriage and adoption agencies in order to control the movement within or between countries of children and young adults to prevent the possibility that they will be led into prostitution or other forms of sexual exploitation;

(b) Increase surveillance by immigration authorities and frontier police in order to ensure that travel abroad by children, especially those not accompanied by their parents or their guardians, is not related to trafficking in human beings;

(c) Set up facilities and support those existing, in order to protect and assist the victims of traffic in children and young adults.

6. Recommendation R(91) 11 also recommends to the Governments of member States:

(a) To examine the advisability of signing and ratifying, if they have not done so, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions (1965), the European Convention on the Adoption of Children (1967), Convention No. 138 concerning Minimum Age for Admission to Employment of the International Labour Organization (1973) and the Convention on the Rights of the Child (1989);

(b) To introduce rules on extraterritorial jurisdiction in order to allow the prosecution and punishment of nationals who have committed offences concerning sexual exploitation of children outside the national territory or, if applicable, review existing rules to that effect and improve international cooperation to that end;

(c) To increase and improve exchanges of information between countries through Interpol, in order to identify and prosecute offenders involved in sexual exploitation of children and also those who organize it;

(d) To establish links with international associations and organizations working for the welfare of children and young adults in order to benefit from data available to them and secure, if necessary, their collaboration in combating sexual exploitation;

(e) To take steps towards the creation of a European register of missing children.

7. The Committee of Ministers of the Council of Europe also proposed in its recommendation that the Governments of member States promote research at national and international levels, in particular on the following points:

(a) The nature and extent of various forms of sexual exploitation of children and young adults, especially with a cross-cultural view;

(b) The nature of paedophilia and factors contributing to it;

(c) The links between adoption and sexual exploitation;

(d) The links between sexual abuse within the family and prostitution;

(e) The characteristics, role and needs of the consumers of child prostitution and child pornography;

(f) Evaluation studies of vocational training and reintegration programmes concerning youth involved in prostitution;

(g) The structure, international networks, interconnections and earnings of the sex industry;

(h) The links between the sex industry and organized crime;

(i) The possibilities and limitations of the criminal justice system as an instrument of prevention and repression of various forms of sexual exploitation of children and young adults;

(j) The epidemiology, cause and consequences of sexually transmitted diseases in children and young persons, analysing their links with sexual abuse and exploitation.

III. COMMENTS RECEIVED FROM NON-GOVERNMENTAL ORGANIZATIONS

American Association of Jurists

[Original: Spanish]
[8 December 1995]

1. The American Association of Jurists considers that traffic in children, for whatever purpose, child prostitution and the use of children in pornography are abhorrent practices which have taken on considerable proportions internationally and are linked to other international criminal activities, so that it has now become necessary to combat them through effective international penal measures, and not only by promoting measures at national level or preventive and remedial measures which, though important, have proved inadequate.

2. One question which arises is whether existing rules are sufficient or whether in fact there is a legal vacuum which needs to be filled, regarding the description or criminal classification of such practices. While the Convention on the Rights of the Child refers to them in articles 11, 19, 34 and 35, calling for national or multilateral measures to combat them, nowhere in the Convention are they either described or classified as offences and even less as international crimes, nor are any effective international cooperation mechanisms established, such as, for instance, some form of international jurisdiction. In other words, there is nothing in the Convention on the Rights of the Child which resembles the provisions of articles 4 to 9 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with respect to the offence of torture. Moreover, neither the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, nor the 1926 Slavery Convention nor the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery describe or classify the offences we are referring to, so that in no way do they obviate the need for an optional protocol to the Convention on the Rights of the Child.

3. It would seem superfluous to argue that the practices under consideration by the working group constitute offences which should be punished. In addition, it should be pointed out that these offences are international crimes. In order to be international, an offence must involve either a transnational and/or an international element. A transnational element is present when the iter criminis is cross-frontier, that is, when the commission of the offence begins in one country and ends in another, as in the case of sexual tourism. The international element may be considered present when the offending conduct violates legal assets recognized by the international community as being fundamental. The acts against children under consideration by the working group clearly belong to this category of offences. There can be no doubt whatever that international crimes are involved. The American Association of Jurists therefore considers that the working group should include the following practices among its guidelines, considering them as international crimes:

(a) The traffic in and/or sale of children, particularly for their economic or sexual exploitation, for their unlawful adoption or for purposes of removing from them organs, tissues or body material;

(b) Promoting or facilitating the prostitution or corruption of children;

(c) Using children for performances or the production of pornographic material or pictures.

4. The American Association of Jurists therefore proposes three types of international offences or crimes: trafficking in children for various unlawful purposes, promoting or facilitating child prostitution and using children for pornography.

5. With regard to the traffic in children, the AAJ distinguishes between three forms of such traffic according to the purpose served: for economic or sexual exploitation, for unlawful adoption and for the removal of organs, tissues or body material. The expression "traffic in children" is preferred to "sale of children", because what characterizes the unlawful act is not the existence of pecuniary compensation, but the cession of a minor to a third party by those who have the legal care of the child, or the appropriation of a minor by a third party without the consent of the child's legal guardians, for purposes of economic or sexual exploitation, unlawful adoption or the removal of organs, tissues or body material. With regard to children, their economic or sexual exploitation, unlawful adoption or removal of organs, tissues or body material constitute independent offences, that is to say, they are offences even though unrelated to traffic in children. The extraction of renewable tissue, with the consent of the person who has the legal care of the minor as well as the minor's own consent, without the purpose of gain, which is legally controlled and subject to the supervision of the relevant health authorities, would not constitute an independent offence. In this respect the AAJ suggests the following text: "The removal of organs, tissues or body material from a minor, even though not intended for gain and carried out with the consent of the legal guardian and of the minor, shall be prohibited and shall incur punishment. This shall not apply to the removal of renewable tissues, if carried out with the consent of the minor's legal guardian and

with the minor's own consent for no gainful purpose, in accordance with pre-established legal standards and subject to the supervision of the relevant health authorities."

6. Promoting or facilitating child prostitution should be considered an international crime and should be punishable accordingly. In general, where prostitution is concerned, the offender is the procurer or the person engaged in related activities, while the prostituted person, whether or not a minor, is not an offender but the procurer's victim. The prostituted minor, regardless of age, should not therefore be punished as an offender, but protected and socially readapted, while the punishment should apply to the corrupter or procurer, regardless of the age of the minor who has been induced or forced into prostitution.

7. With regard to the use of children in pornography, the constitution of an offence is not in doubt, since there is no presumed ill-determined borderline between what is acceptable and what is totally unacceptable. It is a question of simple pornography, that is, any person using children for the production of performances, or immoral or obscene material or pictures designed to satisfy base instincts or to cause sexual arousal in others shall be deemed to have committed an offence. Since the beneficiary or user of such activities, materials and pictures should also be held criminally liable, there should be no reference to gainful purpose in the definition of the offence, the constituent elements of which should be the use of children, the type of production and the purpose of satisfying base instincts or causing sexual arousal.

8. The AAJ considers it essential that the working group should include among its proposals an international sanction against the use of minors in unlawful activities, such as drug trafficking. Possible offenders might include natural persons, legal persons or de facto associations, while sanctions should include the confiscation of all profit arising from the offence, compensation for the victims, imprisonment for natural persons and the suspension of activities and irreversible dissolution and fine for any legal persons or de facto associations, without excluding further penalties for those in charge.

9. As far as mechanisms for investigating and punishing the offences are concerned, the AAJ considers that, if it is recognized that they are international crimes, then clearly there is a legal vacuum, which may be filled on the basis of the suggestions introduced at the working group's first meeting by some governmental delegations, the draft of the national institutions and the note by the working group's Chairman-Rapporteur. In addition, the AAJ considers that articles 4 to 9 of the Convention against Torture may constitute an excellent source of inspiration on which to base future guidelines.

10. With regard to quasi-litigious or quasi-jurisdictional mechanisms, the AAJ considers that the absence of any complaints procedure in the Convention on the Rights of the Child similar to that established in the Optional Protocol to the International Covenant on Civil and Political Rights and in articles 20 to 22 of the Convention Against Torture,

constitutes a serious legal omission which must be remedied. In document E/CN.4/Sub.2/1994/NGO/17 referring to this subject, the AAJ suggests three alternatives, which are not exclusive:

(a) Establishing a complaints procedure before the Committee on the Rights of the Child;

(b) Establishing a procedure whereby the Committee can give an advisory opinion;

(c) Developing and improving the examination of reports by States parties.

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Second session
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COMMENTS ON THE GUIDELINES FOR A POSSIBLE DRAFT OPTIONAL PROTOCOL

Note by the Secretary-General

Addendum

The present document contains comments submitted by the International Criminal Police Organization.

International Criminal Police Organization

[Original: French]
[5 December 1995]

1. The International Criminal Police Organization (Interpol) wishes to emphasize the importance of the initiative taken by the Commission on Human Rights in establishing the Working Group for the elaboration of a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. This initiative is in keeping with the resolution adopted by the Interpol General Assembly at Dakar in 1992. The resolution not only established the Standing Working Party on Offences against Minors, but also contained recommendations set out by various topics, such as statistics, prevention, police facilities, training and child pornography, which have prompted Interpol member countries to change their legislation and facilities accordingly.

2. At the 6th meeting of this Interpol Working Party, in London in November 1995, in-depth discussions were held on the subject of updating these recommendations in the light of their current relevance and of work done and progress made since 1992. A new version should be proposed for adoption at the next Interpol General Assembly in 1996. This version is very similar to the provisions contained in the guidelines for a possible additional protocol to the Convention on the Rights of the Child.

3. It is extremely important for the Convention on the Rights of the Child to be supplemented by a specific text setting forth concrete measures. The signatories to the Convention, and hence to the additional protocol, must be fully aware of their obligations and of the concrete measures which need to be taken. One of the strengths of these guidelines, therefore, is that they do not seek to establish a new international instrument, but instead to draw attention to the ones that already exist and thus stress the need to work within their ambit.

4. The fourth subparagraph of part III, "Implementation of pertinent instruments", draws a parallel between international organizations and non-governmental organizations, yet they are two radically different entities, from the standpoint of both structure and operating methods. Interpol, as an international organization, is not supposed to be governed by the same rules as a non-governmental organization and therefore does not come under any "national legislation", contrary to what the end of the sentence would suggest. This subparagraph should be redrafted in such a way as to fully distinguish between the two types of organization and their respective duties, while bearing in mind the need to encourage their activities and mutual collaboration.

5. In part IV, relating to legislation and measures for compensation and protection of children, paragraphs 1 and 2 are extremely important in that they provide the forces of law and order with the requisite legislative tools to carry out their work effectively. Above all, they ensure that the offences targeted will be effectively prosecuted, either in the country where the offence has been committed or in the offender's country of origin. Extraterritorial legislation is extremely important, as an instrument of

deterrence and punishment of offenders. During discussions of this issue, the Interpol Working Party agreed that for this legal instrument to be both effective and efficient, bilateral agreements would have to be concluded between "receiver" countries of this type of crime and "supplier" countries of the criminals, in the interests of criminal proceedings. Accordingly, it might have been better to combine part IV, paragraph 2, with part V, on international cooperation, more especially with paragraphs 1, (a), (b) and (c), which focus on the need for bilateral agreements, particularly in connection with judicial procedures.

6. Lastly, it appears that part IV lacks a paragraph on the specific measures to be applied to the forces of law and order and the need for ongoing training, setting up specialized units, the priority to be given to crimes against children and the appointment of specialized liaison officers responsible for easier communication and exchange of information, and also to ensure that children's basic rights are safeguarded during judicial proceedings. The Inter-sessional Working Group will find these issues in the Interpol recommendations*. Part IV, paragraph 6, of the guidelines contains the principal rules for effectively safeguarding the rights of child victims, in particular the right not to suffer additional trauma as a result of the investigation and the relevant judicial proceedings.

7. Interpol attaches great importance to its relations with United Nations ad hoc bodies on the various subjects of relevance to both organizations.

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* These recommendations can be found in the report submitted to the Interpol General Assembly, which is available for consultation at the secretariat of the Centre for Human Rights.